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November 21, 2024

VIA ECF

Hon. P. Kevin Castel, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Virtual Creative Artists, LLC v. Seeking Alpha Inc.
Case No.: 1:24-cv-06260 (PKC); Request to Stay Discovery

Dear Judge Castel:

We represent defendant Seeking Alpha Inc. ("Defendant") in the above-captioned action. Pursuant to Your Honor's Individual Rule 1.C., Defendant respectfully submits this letter to request that the Court stay discovery pending a ruling on Defendant's motion to dismiss.

Pursuant to the current calendar, a proposed case management plan is due on November 25, 2024. The current Rule 16 conference is set for December 2, 2024, at 11:00 a.m.¹ Defendant filed a pre-motion letter on November 15, 2024, seeking to dismiss this action. Since then, plaintiff Virtual Creative Artists, LLC ("VCA") has sought to confer regarding the case management plan and scheduling order. Defendant suggested that the planning the management of the case should be stayed pending the decision on the motion, and indeed following any answer, if any, so that the parties can understand the scope of the claims and defenses that may be asserted in the action. On November 21, 2024, VCA stated that it would not agree to stay the deadline for the case management plan and scheduling order.

VCA has not explained why it has taken the position that the parties should proceed with discovery when the entire case may be dismissed. Indeed, per VCA's response to Defendant's pre-motion letter, VCA wants Defendant to prepare a full set of motion papers, following which Defendant "expects to amend." See ECF No. 19 at 3. In other words, VCA insists that the parties prepare a scheduling plan and commence discovery as to a Complaint that VCA "expects" to amend, and an Answer and/or Counterclaim that will not be filed any time soon—if at all.

Moreover, VCA—a non-practicing entity—has not shown that it intends to participate in discovery in any case. In the past two years, VCA has filed roughly 35 lawsuits—10 in this District alone in the past nine months—involving the same patents. The vast majority of these cases resolved within three to four months of filing, or approximately two months of a request to

¹ Since that conference was set, the Second Circuit placed an appeal that the undersigned counsel is arguing on calendar for the same day at 10 a.m. While such argument is first on the calendar, Defendant may need to request a short adjournment depending on the outcome of this letter-request.

*Submission of
a Case Management
Plan will not be required.
All else
will be
considered
at the December 2
conference.
SO ORDERED
[Signature]
USDJ
11-21-24*



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move to dismiss. Eight of the 10 VCA cases in this District have already settled, most prior to the date to file an answer, and one has yet to be served. Therefore, while commencing discovery serves VCA's purpose of increasing costs to help it leverage the expense of litigation, proceeding with discovery does not serve judicial economy when such a schedule will be likely changed as a result of VCA's expected amendment, further amended based on the nature and timing of Defendant's Answer and Counterclaim, or mooted by the dismissal of VCA's deficient claims.

Accordingly, Defendant respectfully requests that the Court stay the deadline for the submission of the case management plan and scheduling order and adjourn the December 2 conference (to the extent it is not converted into a pre-motion conference) *sine die* pending the outcome of the intended motion to dismiss and the joinder of all pleadings.

We thank the Court for its attention to and consideration of this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'E. M. Lackman', written over a horizontal line.

Eleanor M. Lackman

cc: All Counsel of Record (via ECF)